

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER e: RIGHTS AND DUTIES OF EMPLOYEES

PART 2835
RECOVERY OF BENEFITS

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SUBPART B: DETECTION OF OVERPAYMENTS

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AUTHORITY: Implementing and authorized by Sections 900, 901, 1700, 1701 and 1706 of the Unemployment Insurance Act [820 ILCS 405].

SOURCE: 56 Ill. Adm. Code 800: Subpart F adopted at 7 Ill. Reg. 383, effective December 23, 1982; recodified to 56 Ill. Adm. Code 800: Subpart D at 8 Ill. Reg. 6037; recodified to 56 Ill. Adm. Code 2835 at 8 Ill. Reg. 15032; emergency amendment at 8 Ill. Reg. 19687, effective September 28, 1984, for a maximum of 150 days; amended at 9 Ill. Reg. 2493, effective February 13, 1985; amended at 9 Ill. Reg. 16225, effective October 15, 1985; amended at 10 Ill. Reg. 12776, effective July 14, 1986; amended at 11 Ill. Reg. 7626, effective April 14, 1987; emergency amendment at 12 Ill. Reg. 231, effective January 1, 1988, for a maximum of 150 days; emergency expired May 30, 1988; amended at 12 Ill. Reg. 11746, effective July 5, 1988; amended at 32 Ill. Reg. 18978, effective December 1, 2008; emergency amendment at 34 Ill. Reg. 2330, effective January 19, 2010, for a maximum of 150 days; amended at 34 Ill. Reg. 8515, effective June 16, 2010; amended at 35 Ill. Reg. 6148, effective March 25, 2011; emergency amendment at 36 Ill. Reg. 5618, effective March 21, 2012, for a maximum of 150 days; amended at 36 Ill. Reg. 12310, effective July 19, 2012; amended at 43 Ill. Reg. 6512, effective May 14, 2019; emergency amendment at 44 Ill. Reg. 9274, effective May 15, 2020, for a maximum of 150 days; amended at 44 Ill. Reg. 14684, effective August 27, 2020; emergency amendment at 45 Ill. Reg. 2274, effective February 8, 2021, for a maximum of 150 days; amended at 45 Ill. Reg. 8310, effective June 23, 2021; emergency amendment at 45 Ill. Reg. 13994, effective October 25, 2021, for a maximum of 150 days; amended at 46 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 2835.67 Waiver of Recovery of Overpayments of Non-federally Funded Regular and Extended Benefits and Short-Time Compensation (WorkShare, IL)

- a) The Department will permanently waive recovery of any overpayment of non-federally funded regular and extended unemployment insurance benefits and short-time compensation (WorkShare, IL) benefits received by an individual on or after March 8, 2020 and prior to the last day of a disaster period established by the gubernatorial disaster proclamation in response to COVID-19, dated March 9, 2020, and any consecutive gubernatorial disaster proclamation in response to COVID-19, if the Department determines that:
 - 1) The overpayment was without fault on the part of the recipient; and
 - 2) Recovery would be contrary to equity and good conscience.
- b) For purposes of subsection (a)(1), the provisions of Section 2835.35 are applicable in determining whether the benefits giving rise to the overpayment were received with fault on the part of the recipient, and the provisions of Section 2835.40 are applicable in determining whether the benefits giving rise to the overpayment were received without fault on the part of the recipient. The examples below give guidance as to whether the overpayment was without fault

on the part of the recipient or whether the overpayment was not without fault on the part of the recipient.

- 1) EXAMPLE 1: The claimant was discharged from his job. A claims adjudicator issues a determination holding that the discharge was for reasons other than misconduct. The claimant is paid benefits. The employer appeals and an Administrative Law Judge issues a decision that reverses the claims adjudicator's determination, resulting in an overpayment being established. This overpayment is without fault on the part of the claimant because the benefits paid to the claimant were based on the claims adjudicator's finding that the discharge was not misconduct.
- 2) EXAMPLE 2: In filing a claim for benefits a claimant presents the claims adjudicator with paycheck stubs evidencing that during the claimant's base period, the claimant received remuneration for services performed for Employing Unit A and Employing Unit A had not reported to the Department these payments as wages. The claims adjudicator makes a determination that the payments that the claimant received from Employing Unit A constituted wages, and consequently, the claimant's weekly benefit amount is increased by \$100 per week. Employing Unit A appeals and an Administrative Law Judge issues a decision reversing the claims adjudicator, and holding that the payments from Employing Unit A did not constitute wages since the claimant's services for Employing Unit A fell within an exemption from the definition of "employment". The Administrative Law Judge's decision results in the claimant having an overpayment in the amount of \$100 for each week that the claimant received benefits with respect to this claim. This overpayment is without fault on the part of the claimant because the benefits paid to the claimant were based on the claims adjudicator's finding that the payments constituted wages for Act-insured employment.
- 3) EXAMPLE 3: The claimant is a full-time teacher and also works part time at a gym. While she is paid her full teaching salary during the pandemic, she is laid off by the gym due to the State's closure order. She files a claim for benefits and names the gym as her last employer. When a claimant certifies for benefits each week, all wages earned must be reported. The claimant certifies for benefits each week but does not report her school wages because she erroneously believes that she is filing her claim "against" the gym. When her failure to report her school wages is discovered, an overpayment is established. This overpayment is not without fault on the part of the claimant because, while certifying for benefits, the claimant made a material misrepresentation in answering the question about wages that she had earned.

4) EXAMPLE 4: The claimant is held to be ineligible for benefits for the weeks between April 12, 2020 and May 2, 2020, in a determination that became final. Also, in a determination that became final, the claimant's overpayment for those weeks is held to be for fraud under Section 901 of the Unemployment Insurance Act [820 ILCS 405/901]. Since the claimant's overpayment was adjudicated to finality to be for fraud, the overpayment is not without fault on the part of the claimant. Consequently, the claimant is not eligible to make a request for a waiver of recovery of these overpayments. Therefore, the claimant is not entitled to receive the notice provided in subsection (f) informing an individual that the individual may request a waiver of recovery of the overpayment with respect to the overpayments for these weeks.

c) For purposes of this subsection, "financial hardship" shall mean the inability to meet vital financial obligations that cannot be deferred. For purposes of subsection (a)(2), the provisions of Section 2835.45 shall not be applicable. Instead, for purposes of subsection (a)(2), recovery of the overpayment will be considered to be against equity and good conscience if:

1) It would cause financial hardship to the person from whom it is sought; or

2) Regardless of the recipient's financial circumstances, the recipient can show that, based on the overpayment or notice that a benefit payment would be made, the recipient has:

A) relinquished a valuable right; or

B) changed positions for the worse; or

3) Recovery would be unconscionable under the circumstances.

d) For purposes of this Section, if the Department has previously recovered overpayment funds from a recipient and that recipient is granted a waiver pursuant to this Section, then that recipient shall not be refunded those recovered monies as no authority has been provided to the Department to refund those recovered monies in the Unemployment Insurance Act [820 ILCS 405/100 et seq.].

e) A claimant's request for a waiver of recovery of an overpayment of non-federally funded regular or extended unemployment insurance benefits, or short-time compensation (WorkShare, IL) benefits, during the time period in which the Federal Pandemic Unemployment Compensation (FPUC) program provided a

supplement to the claimant's weekly benefit amount, and for which the FPUC supplemental amount is included in the overpayment amount, shall be treated as a request to waive recovery of the FPUC overpayment, as described in Section 2835.70, as well as recovery of the overpayment based on the non-federally funded regular or extended unemployment insurance benefits or short-time compensation (WorkShare, IL) benefits. The determination or decision shall set forth the findings for allowing or denying waiver of recovery of the overpayment based on the non-federally funded regular or extended unemployment insurance benefits or the short-time compensation (WorkShare, IL) benefits and the FPUC overpayment, and shall include the reason for the determination or decision, and when waiver is allowed, the time period of the waiver and the amount waived.

EXAMPLE: A claimant files a request for waiver and provides related information to waive a regular unemployment insurance overpayment from the week beginning June 7, 2020 through the week ending August 15, 2020. In this case, the FPUC program provided a \$600 supplement to the claimant's weekly benefit amount for weeks between June 7, 2020 through the week ending July 25, 2020, and the FPUC supplements are included as part of the overpayment. The adjudicator determines that the claimant's request meets the criteria for a waiver of both overpayments, and states in the determination:

- 1) the reasons for the waivers;
- 2) a waiver of recovery of the regular overpayment is granted for the period from the week beginning June 7, 2020 through the week ending August 15, 2020;
- 3) the FPUC waiver is granted for the period from the week beginning June 7, 2020 through the week ending July 25, 2020; and
- 4) the amount waived for each program.

- f) The Department shall identify the individuals who have received an overpayment of non-federally funded regular or extended unemployment insurance benefits or short-time compensation (WorkShare, IL) benefits during the period provided in subsection (a), and to each individual, the Department shall mail a notice informing the individual that the individual may request a waiver of recovery of the overpayment. Pursuant to 56 Ill. Adm. Code 2720.5, the notice shall be sent to the last known address of the individual as the term "last known address" is defined at 56 Ill. Adm. Code 2720.35. In order to be eligible for the waiver of recovery of the overpayment, the individual must file the request within 45 days of the mailing date of the notice.

EXAMPLE: The Department sends the notice provided in subsection (f) to the claimant at the last address that the claimant had provided to the Department. However, the claimant moved to a different address, notified the United States Postal Service of the new address, but did not provide the Department with the new address. Service of the notice to the claimant at the last address provided to the Department is proper, and the fact that the claimant notified the United States Postal Service of the new address does not extend the 45 days within which the claimant must file the request for waiver in order for the request for waiver to be timely.

g) The notice provided in subsection (f) shall:

- 1) be a letter generated by the Department that provides the claimant with notice that the claimant may request waiver of recovery of one or more overpayments;
- 2) be used by the claimant in making the claimant's request for a waiver of recovery of any overpayment;
- 3) contain a questionnaire for the claimant to provide the information required in subsection (a); and
- 4) provide filing instructions for the claimant.

h) A determination by an adjudicator for a waiver of recovery of an overpayment pursuant to this Section may be based on the claimant's interview or written responses contained in the notice described in subsection (g). An interview need not be conducted unless the adjudicator determines that more information is needed to make the determination.

i) A determination, pursuant to this Section, on a recipient's request for a waiver of recovery of an overpayment shall be subject to reconsideration and appeal as set forth in Sections 703, 800, 801, and 803 of the Unemployment Insurance Act [820 ILCS 405].

(Source: Added at 46 Ill. Reg. _____, effective _____)